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3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: November 19th, 2012**
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10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF WASHINGTON

12 In re:

13 LLS AMERICA, LLC,

14 Debtor.

No. 09-06194-PCW11

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16 BRUCE P. KRIEGMAN, solely in
17 his capacity as court-appointed
Chapter 11 Trustee for LLS America,
LLC,

18 Plaintiff,

Adv. No. 11-80296-PCW

19 vs.

20 267406 BC, LTD., et al.,

21 Defendants.
22 _____

MEMORANDUM DECISION RE:
DEFENDANTS JAMES YOUNG AND
ERIC VAN DYK'S MOTIONS TO
DISMISS (ECF NOS. 96 & 109)

23 This adversary is one of hundreds commenced by the trustee of the LLS America,
24 LLC ("LLS America") bankruptcy estate which adversaries seek to recover money paid
25 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme
26 conducted by the debtor. The following defendants filed motions to dismiss in this
27 adversary proceeding:
28

<u>Defendant</u>	<u>Date Filed</u>	<u>ECF No.</u>
James Young	December 16, 2011	96
Eric Van Dyk	February 8, 2012	109

In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal raised in the subject motions are the same as those raised in the Previous Decision. Many of the facts in the Previous Decision are relevant to the subject motions.

The trustee in a supplemental affidavit of Curtis Frye (ECF No. 219), and the defendants, by declarations, provided the following evidence:

1. James Young - The trustee presented evidence in this case that the defendant loaned or invested \$35,000 (CAN) and one (1) promissory note was issued. In four (4) distributions occurring from April 2008 to November 2008, the defendant received \$42,000 (CAN). By declaration (ECF No. 102), the defendant presented evidence that he resides in Canada, rarely travels to the United States, and each promissory note listed a Canadian entity as borrower with distributions primarily made from Canadian entities. The declaration further states that the loans or investments were solicited in Canada, but no details were provided regarding the manner of solicitation.

2. Eric Van Dyk - The trustee presented evidence in this case that the defendant loaned or invested an unknown amount with either none or an unknown amount of promissory notes issued. In 17 distributions occurring from November 2005 to January 2008, the defendant received \$45,005 (CAN). By declaration (ECF No. 110), the defendant presented evidence that he resides in Canada, rarely travels to the United States, and to the extent that he received any promissory notes, those promissory notes listed a Canadian entity as borrower with distributions primarily made from Canadian entities. The declaration further states that the loans or investments were solicited in Canada, but no details were provided regarding the manner of solicitation.

1 The grounds for dismissal in the subject motions are: (1) ineffective service of
2 process; (2) improper extraterritorial application of United States bankruptcy law; and
3 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
4 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
5 forth in the Previous Decision and is applicable to the subject motions.

6 As in the Previous Decision, one basis for the request to dismiss is the lack of
7 personal jurisdiction. Unlike the situation in the Previous Decision, these defendants did
8 not file a proof of claim in the underlying bankruptcy case of LLS America. These
9 defendants did, however, seek affirmative relief in this adversary. As concluded in the
10 Previous Decision, by filing a motion to withdraw reference of this adversary to the
11 District Court for Eastern District of Washington, the defendants requested a
12 determination whether this court or the District Court had authority to enter final orders
13 in this adversary. That motion sought a ruling on a substantive legal issue. By requesting
14 a ruling on the merits of a legal issue in this case, the defendants have consented to the
15 exercise of jurisdiction by the federal courts of the Eastern District of Washington.

16 The defendants filing the subject motions had sufficient minimum contacts to
17 establish personal jurisdiction. Many of those facts in the Previous Decision are
18 applicable to the defendants in this case. As stated in the Previous Decision and in the
19 court's oral ruling (ECF No. 715) on the Chapter 11 Trustee's Nunc Pro Tunc Motion
20 for Substantive Consolidation of Debtor and Non-Debtor Estates (ECF No. 449) in the
21 underlying LLS America bankruptcy case No. 09-06194-PCW11, the promissory notes
22 generally provided that any one of the group of LLS companies was responsible for
23 repayment. That group of companies was managed and operated in Spokane,
24 Washington. This adversary complaint alleges that the defendants knew or should have
25 known that they were participating in a Ponzi scheme. Unlike the defendants in the
26 Previous Decision, these defendants did not receive commissions, i.e., compensation for
27 soliciting or locating other investors or lenders. However, the economic activity in which
28 the defendants did engage was sufficient to establish minimum contacts for personal

1 jurisdiction. For these reasons, the motions to dismiss are **DENIED**. Counsel for the
2 defendants shall submit orders consistent with this decision.

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4 ///END OF MEMORANDUM DECISION///
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